

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4007 of 1997

Date of decision: 16-7-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GSRTC

Versus

RAMAN BABUBHAI VASAVA

Appearance:

MR HS MUNSHAW for Petitioner
MR JV JAPTEE for Respondent No. 1
None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/07/98

ORAL JUDGEMENT

At the request of the counsel for the parties this first appeal is taken up for final hearing today.

This appeal is directed by the Gujarat State Road Transport Corporation against the award dated 16th July, 1997 of the Motor Accident Claims Tribunal (Auxiliary), Sabarkantha at Himatnagar, passed in M.A.C.Petition No.42/91 under which the claimant - respondent No.1 was awarded compensation of Rs.60,000/- with interest at the rate of 12% per annum from the date of petition till realisation along with proportionate cost.

2. The brief facts of the case are that respondent No.1-claimant filed claim petition in the Motor Accident Claims Tribunal, Sabarkantha at Himatnagar claiming therein Rs.60,000/- as compensation on account of the injuries sustained by him in the motor accident. The vehicle in question belonged to the appellant herein. The accident took place on 26th July, 1990. It is the case of the respondent No.1 claimant that after stepping down from the jeep he went on road and at that time S.T.Bus No.GRU 6876 came in full speed, its driver was driving it rashly and negligently, which dashed against the claimant. As a result thereof he fell down on the road and received serious injuries. He was admitted in Vatrak General Hospital as indoor patient and he took treatment for one month in that hospital and spent huge amount towards medicines, operation and other expenses.

3. The driver of the vehicle of the State Road Transport Corporation has not contested the claim application of the claimant as he has chosen not to file written statement. The application has been contested by the appellant herein, who filed written statement vide Exh.21. In the written statement defence has been taken that the vehicle of the Corporation was going with moderate speed and on the right side of the road. At that time one jeep which was ahead of the bus, its driver suddenly applied break without giving any kind of signal. The claimant stepped down from the back side of the jeep. At that time one truck came in full speed from the opposite side. As the driver of the S.T. bus stopped his bus on the right side, the claimant dashed against the S.T. bus. It is stated that the accident took place due to sole negligence on the part of the claimant and he is not entitled to a single pie towards compensation from the Corporation.

4. On the basis of the pleadings of parties the Tribunal framed three issues in the claim application. The Tribunal held that the accident occurred due to rash

and negligent driving on the part of the driver of the S.T. bus No.GRU 6876, and awarded compensation as under:

Rs. 32,400/- under the head 'loss of future income'.

Rs. 18,000/- under the head 'pain, shock and suffering.

Rs. 10,000/- lump sum payment towards medical expenses,
etc.,

Rs. 60,400/- total

Out of this total compensation of Rs.60,400/- as the claimant has restricted his claim to Rs.60,000/- the award was made for this amount.

5. The learned counsel for the appellant firstly contended that the learned Tribunal has committed serious illegality in holding that the accident was caused due to rash and negligent driving on the part of the driver of S.T. bus. The claimant was wholly negligent and the accident was as a result of his negligence. In the alternative he has submitted that 50% negligence should have been taken to be of the claimant as he has not taken all the care to see that from opposite direction S.T. bus was coming. It has next been contended that the amount of Rs.10,000/- which has been awarded under the head 'expenses on medicines, etc.,' is on the higher side. Lastly it is contended that the claimant is a person of 19 years and multiplier of 15 which is taken for the purpose of awarding compensation is towards higher side.

6. On the other hand learned counsel for the respondent No.1- claimant contended that the Tribunal, after appreciating evidence produced by both the parties, has recorded the finding of fact regarding rash and negligent driving on the part of driver of the Corporation, which does not call for interference of this court, and this court may not interfere with the finding of fact. Carrying this contention further, learned counsel for the respondent No.1 claimant contended that from the evidence which has come on record, coupled with the fact that the vehicle of the Corporation was a heavy vehicle and it was coming from the back of the claimant, it had to take all the care to see that the accident is not caused. So far as the other contention of the learned counsel for the appellant is concerned, learned counsel for the respondent No.1-claimant contended that the amount of Rs.10,000/- which has been awarded under the head 'medical expenses' is towards lower side. Similarly, multiplier which has been adopted is also

towards lower side as the claimant was a young boy of 19 years. Lastly learned counsel for the respondent-claimant contended that there is evidence on record that the claimant was earning Rs.30/- per day by doing labour work and he got food from his master. But still in the presence of these evidence the income of the applicant was taken at Rs.600/- per month on the basis of what he stated in the claim application. So it is a case where income has been taken to be on the lower side and that is another factor which justifies non-interference of this court in appeal.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In the proceedings before the Tribunal, the driver of the S.T. bus was examined as a witness at Exh.43. He admitted in his deposition that complaint of this accident was lodged by the conductor of the very bus. From the complaint lodged by the conductor of the bus it is found by the Tribunal, which is not disputed by the learned counsel for the appellant, that the driver was driving the S.T. bus with full speed and in negligent manner. The claimant has been examined before the Tribunal at Exh.31. He stated on oath that when he was standing at the road near Madhavkampa S.T. bus stand one S.T. bus No. GRU 6876 came in full speed and in the wrong side of the road and dashed against him, as a result of which he fell down on the road and received injuries. He denied the suggestion which has been put to him in the cross examination that the jeep driver suddenly stopped the jeep without giving any signal and when the claimant stepped down from the jeep the said accident had taken place. So the Tribunal had to decide the matter of negligence of the S.T. driver in driving the vehicle on the basis of the evidence of parties; and the Tribunal has not committed any error in reaching to the conclusion that the driver of S.T. bus was wholly negligent, as a result of which the claimant has sustained injuries. The story which has been propounded by the S.T. driver in his statement has rightly not been accepted. In support of the theory that he had already stopped the vehicle for unloading passengers, no evidence has been produced. In the absence of any corroborative evidence no reliance could have been placed on statement of the driver of the S.T. bus that he stopped the vehicle for unloading passengers. So this is a case where the accident was caused by the S.T. bus while it was running on the road. Even if it is taken that the jeep driver had suddenly applied break and stopped it without giving any signal, it was the duty of the driver of the S.T. bus to take all the care on the highway and

it was not taken by him. On the contrary the complaint filed by the conductor gives out that the driver of S.T. bus was driving the vehicle at high speed. So taking into consideration totality of the facts of the case, the finding recorded by the Tribunal regarding negligence of S.T. driver does not call for interference.

8. Now I may advert to the other contention raised by the learned counsel for the appellant. From the uncontroverted evidence of the claimant I find that he remained in hospital for a period of more than one month as indoor patient and was operated twice and steel rod was inserted in his right arm and plaster was kept on the right arm for four months. It has also come in the evidence that after discharge from hospital he visited the hospital for further treatment fortnightly. He has given out the expenses for the treatment, medicine, operation, etc., to the tune of Rs.10,000/- and Rs.1000/towards conveyance expenses and Rs.1500/- to Rs.2000/towards healthy food. So, looking to the injuries sustained by the claimant as well as the fact that he remained in the hospital for more than one month and twice he was operated, and plaster was there for four months and he had to go to the hospital fortnightly for taking further treatment, Rs.10,000/- awarded by the Tribunal cannot be said to be towards the higher side. On the basis of the material which has come on record and uncontroverted statement of the claimant, the amount of Rs.10,000/- awarded under the head 'expenditure for treatment, operation and medicine, cannot be said to be towards higher side.

9. The claimant was aged 19 years and he was a labourers. Looking to the aforesaid facts, multiplier which has been taken as 15 also cannot be said towards higher side. No other point has been raised by the learned counsel for the appellant.

10. In the result the first appeal fails and the same is dismissed. No order as to costs.

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